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Supreme Court, U.S.
FILED
APR 15 1994
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NO. 93-1393

In the Supreme Court of the United States

OCTOBER TERM, 1993

STEPHEN AND MALVINA GALLODORO
Petitioners

vs.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITIONERS WRIT OF CERTIORARI

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Attorney for Petitioners
Stephen and Malvina Gallodoro

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

MAY IT PLEASE THE COURT

RESPONSE TO RESPONDENTS BRIEF

Respondent has paid a judgment, inclusive of principal interest and costs which judgment became executory on December 28, 1993, upon issuance of the mandate of the Fifth Circuit.

Respondent did not apply for a stay of mandate, tendered the check in the exact amount of the judgment and attempted to secure a receipt and release of all claims when tendering the amount owed and judicially collectable.

No receipt and release were executed by petitioners, nor was one agreed upon or due. There was no consideration for the release.

This case was in active litigation for four years. Not until the judgment became executory did respondent tender an unrestricted check for the amount owed pursuant to the judgment and nothing more.

Respondent admits in his argument that the draft was in full payment of the judgment.

While it may have been the intent of respondent that the payment of the judgment was in full settlement, the payment of the judgment and nothing more can only be construed as payment for those issues resolved in judgment. The payment was accepted as payment of the judgment upon which petitioners could execute and nothing more.

Respondent confuses the significance of its obligation pursuant to the court judgment.

PRIMA FACIAS PROOF OF LACK OF INCORPORATION AND LACK OF JURISDICTION

Respondent's proof of corporate status consisted entirely of Articles of Association. (Respondent's Appendix B-1), Company's Certificate of Authority issued by the Insurance Commissioner of the State of Louisiana (Respondent's Appendix B-6). Respondent's entire proof is reproduced in its reply brief.

Patent on the record is that State Farm Mutual Automobile Insurance Company has no authority from the Secretary of State of the State of Illinois, pursuant to whose authority corporate charters are issued. State Farm has no corporate charter from any state.

Patent on the face of the record is the absence of documentary qualification as a foreign corporation qualified to do and doing business in the State of Louisiana with whom foreign corporations must register.

The use of the word "corporation" interchangably with the use of the word association in the Articles of Association do not render this mutual association a corporation.

State Farm is by virtue of its Articles of Association a limited partnership.

It is an artificial entity created by the insurance code of the State of Illinois not the corporate law of the state.

In *Great Southern Fire Proof Hotel Co. v. Jones,* 172 U.S. 499, 20 S.Ct. 690 this court held that a limited partnership association (which State Farm is) although possessing "some of the characteristics of a corporation" and deemed a citizen by the law creating it may not be deemed a citizen under the jurisdiction established for corporations.

CONCLUSION

A study of State Farm's Articles of Association, the State Farm Policy and internal organization lead to the inescaple conclusion that State Farm is not a corporation but a limited partnership and that federal diversity does not exist nor has it ever existed.

Respectfully submitted,

LAW OFFICES OF
EVANGELINE M. VAVRICK
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(504) 899-5555

Evangeline M. Vavrick

PROOF OF SERVICE

I, Evangeline M. Vavrick, attorney for the petitioners hereby certify that on this day, I have served copies of the foregoing Reply Brief on:

Matthew J. Ungarino
Law Offices of Matthew J. Ungarino
1470 One Lakeway Center
3900 North Causeway Boulevard
Metairie, Louisiana 70001
Attorney for Respondent

By mailing a copy thereof, postage prepaid addressed to his office, this 15th day of April, 1994.

EVANGELINE M. VAVRICK

APPENDIX A

December 20, 1993

Mr. Matthew J. Ungarino
1470 One Lakeway Center
3900 North Causeway Boulevard
Metairie, LA 70002

RE: Stephen and Malvina Gallodore
v. State Farm Insurance Company
No. 92-3898, U.S. Court of Appeals

Dear Mr. Ungarino:

It is my understanding that your office called relative to the above matter.

According to my calculations there is $70,864.00 due.

Principal =		$52,933.84	
Interest =		$14,842.51	
11/29/90	to	12/31/90:	11.5%
1/01/91	to	12/31/91:	11.0%
1/01/92	to	12/31/92:	9.0%
1/01/93	to	12/31/93:	7.0%
Costs =		$ 3,087.65	

The judgment will become executory on December 28th.

Very sincerely,

LAW OFFICES OF EVANGELINE M. VAVRICK

_____

Evangeline M. Vavrick

EMV/flr
c.c. Stephen and Malvina Gallodoro

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
OCT 8 92

STEPHEN GALLODORO, ET AL	CIVIL ACTION
versus	NUMBER 90-5025
STATE FARM INSURANCE COMPANY	SECTION "M" (4)

AMENDED JUDGMENT

The undersigned Magistrate Judge entered a Judgment in this cause on September 10, 1992. On September 17, 1992, defendant filed a motion to amend the judgment as it pertained to the pre-judgment judicial interest rate. In considering this motion, we found that Louisiana law allows for multiple interest rates on judgments pursuant to Civil Code article 2924. LSA - CC art. 2924 (West Supp. 1992).[1] We therefore hereby amend the September 10, 1992 Judgment to read as follows:

This case came on for trial on April 27, 1992 and concluded on September 9, 1992.

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[1] See Our Minute Entry in this case dated October 7, 1992 wherein we granted defendant's Motion to Amend the Judgment.

DATE OF ENTRY OCT 08 1992

After reviewing the record, the evidence and the law, and for the reasons orally assigned on the record in Court, and further considering the direction of the Court as to the entry of judgment, accordingly.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of plaintiffs, Stephen Gallodoro and Malvina Gallodoro, and against defendant, State Farm Insurance Company, in the full sum of $52,933.84, together with interest at the rate of: a) 11.5% per annum from November 29, 1990 through December 31, 1990; b) 11% per annum for the calendar year 1991; and c) 9% per annum from January 1, 1992 through the date of judgment, and for costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this amended Judgment be entered *nunc pro tunc* as of September 10, 1992, the date the original judgment was entered in this case.

New Orleans, Louisiana, this 7 day of October, 1992

/s/ Ronald A. Fonseca

RONALD A. FONSECA
United States Magistrate Judge

APPENDIX C

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600CAMP STREET
NEW ORLEANS, LA 70130

December 29, 1993

Mrs. Loretta G. Whyte, Clerk
U.S. District Court
500 Camp Street, Rm. 104
New Orleans, LA 70130

No. 92-3898 - GALLODORO & GALLODORO v. STATE FARM INS. CO.
(D. C. No. 90-CV-5025-M4)

(X) Enclosed to you only is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

( ) Enclosed to you only is a certified copy of the Rule 47.6 Decision in the above case issued as and for the mandate.

( ) The Court having denied the motion for stay of mandate, enclosed to you only is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

Enclosed herewith are the following additional documents:

(X) Copy of the Court's opinion.

(X) Original record on appeal or review. (11) Volumes

(X) Other original papers forwarded with record.
( ) Envelope (1) Box

(X) Bill of Costs approved by this Court.
(X) Copy enclosed to counsel.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

BY: /s/ Connie Boersma
Deputy Clerk

cc: (Letter Only)
Mag. Ronald Fonseca
Ms. Evangeline M. Vavrick
Mr. Matthew J. Ungarino